IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9810 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVYABEN S MODI

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 9810 of 1999

MR PARESH UPADHYAY for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1,3-4

MR HS MUNSHAW for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 01/10/2003

ORAL JUDGEMENT

Heard learned advocate Ms.Harshal Pandya for learned advocate Mr.Paresh Upadhyay on behalf of the

petitioner and learned advocate Mr.H.S.Munshaw for respondent Nos.1 to 3. The respondent No.4, though served, no appearance is filed on his behalf and therefore, the matter is taken up for final hearing in absence of the respondent No.4.

2. The brief facts giving rise to the present petition are narrated as under :

The petitioner was working as Assistant Teacher in Mata Na Madh Primary School at Lakhpat Taluka, Kachchh. On 5th February, 1998, when the petitioner went to resume her duties at the Primary School, after her leave, the principal said that she has to report to the Taluka Development Officer for resumption of duties. On the same day the petitioner reported before the Taluka Development Officer. The Taluka Development Officer also did not permit the petitioner and sent written communication to the District Primary Education Officer seeking guidance whether the petitioner should be permitted to resume her duties or not. Thereafter, the petitioner was not given any posting. On 23rd March, 1998, the petitioner was asked why the petitioner is not joining her duties, which, the petitioner immediately replied on 15th April, 1998. But thereafter also nothing happened. On 14th July, 1998 the authorities passed the termination order. That said order of termination was communicated to the petitioner by the Taluka Development Officer, in turn by the Principal on 28th July, 1998. According to the petitioner, before passing the termination order, no chargesheet is issued to the petitioner and no reasonable opportunity of hearing was given to the petitioner and no detailed procedure has been followed by the respondent. It is also case of the petitioner that number of representations were made from time to time to the authorities but the same remained unanswered and as such, no response was given by the respondent authorities.

3. On behalf of the respondent No.2, affidavit-in-reply has been filed by Mr.N.V.Plas, District Primary Education Officer, Kachchh District Panchayat. In the said affidavit-in-reply, the averments made by the respondent No.2 in para-4 & 5 to the effect that the petitioner was recruited as Assistant School Teacher by the respondent No.2 and she joined her service on 15th December, 1994 and was posted at village Mata-no-Gadh, Taluka Lakhpat. According to the respondent No.2, the petitioner was irregular and irresponsible and was remaining absent with immediate effect and after joining the service on 15th December,

1994 she remained unauthorisedly absent for the period from 17th December, 1994 to 23rd December, 1994 and even thereafter she repeatedly remained absent for a long period under numerous causes which was causing inconvenience to the administration and students of the village. However, no action was taken and thereafter the petitioner was also granted Maternity leave for the period from 5th October, 1995 to 29th December, 1995. Thereafter, again the petitioner joined the service, but again remained on unauthorised leave for a long period and remained absent for 551 days between 21st June, 1996 to 5th February, 1998 and worked only for 27 days during this period. According to the respondent No.2, though the petitioner was remaining unauthorisedly absent a lenient view was taken and she was allowed to resume her duty inspite of her gross indiscipline and negligence in performance of her duty. Thereafter, on 13th June, 1997 she assured the respondent No.3 in writing that she would perform her duty diligently and a copy of the said assurance and / or undertaking of the petitioner dated 13th June, 1997 and a copy of the said undertaking is also produced by the respondent along with the reply. But according to the respondent No.2, inspite of all these facts, there was no change in her conduct and therefore, on report from the Taluka Development Officer and the Principal of the School, there was no option but to pass a Resolution dated 19th March, 1997 to the effect that as and when the petitioner reports for the duty, she may not allowed to do so by the Principal of the school as well as the Taluka Development Officer and she may be sent to the District Primary Education Officer for attending the duty. Lastly, the petitioner remained absent unauthorisedly for long period and on 5th February, 1998 she went to the school for joining the service, but she was asked by the Principal of the School to contact the Taluka Development Officer and accordingly, she approached the Taluka Development Officer on 5th February, 1998 and as per the instructions issued by the District Panchayat Primary Education Committee and the respondent No.2 - the Taluka Development Officer addressed a letter to the respondent No.2 informing him about the irregularities in the service by the petitioner and requested to take appropriate actions for allowing her to join the duty. That said letter was given to the petitioner on 5th February, 1998 at 5.00 p.m. and she had signed accordingly and she was required to approach the respondent No.2 along with the said letter for joining the duty. But the petitioner did not approach the respondent No.2 along with the said letter and therefore, the respondent No.2 having no option but to issue show

cause notice on 23rd March, 1998 seeking her clarification which was replied on 15th April, 1998 in a vague manner. However, considering all the facts of the case in its entirety, according to the respondent No.2, they had no option but to terminate her services in the interest of administration and public at large. Therefore, according to the respondent No.2, service of the petitioner was terminated because of careless and negligent approach in the service causing inconvenience and hardships for the administration and the public at large.

4. Learned advocate Ms.Harshal Pandya has submitted that in identical situation and similar facts, services of two other Assistant Teachers viz. Smt.Kalawatiben C. Patel and Smt. Subdhraben B. Patel were terminated on the same day along with the petitioner on 14th July, 1998 but since these two employees, on approaching the respondent authority viz. The Deputy Director of Education, State Government, Gandhinagar by letter dated 28th August, 2000 addressed to the District Primary Education Officer, District Education Committee, Kachchh Bhuj and in turn, the authority has directed that both Assistant Teachers viz. Smt.Kalawati C. Patel and Smt.Subdraben B. Patel may be reinstated in service subject to rider to hold departmental inquiry against both of them separately and they are not entitled any backwages of the interim period from the date of remaining on leave unauthorisedly. Therefore, learned advocate Ms.Harshal Pandya submitted that in similar cases, reinstatement order has been passed by the respondents wherein it is clearly admitted by the respondents that whatever inquiry or procedure has been adopted or followed by the respondent, the same was not in accordance with law. She also submitted that some procedure has been followed in case of the petitioner because show cause notice dated 22nd March, 1998 has been served on the petitioner which was replied by the petitioner on 15th April, 1998. But thereafter all of sudden, without any chargesheet and departmental inquiry or without examination of any witness to prove the charge against the petitioner, straightaway termination order was passed on 14th July, 1998 . Therefore, according to her submissions, said order of termination is contrary to the service rules and also contrary to the principles of natural justice. Therefore, she submitted that the order of termination may be set aside with direction to the respondents to reinstate the petitioner in service.

5. Learned advocate Mr.H.S.Munshaw for the

respondents has submitted that the respondent No.2 has filed detailed reply and narrated all the details and conduct of the petitioner to remain absent unauthorisedly continuously and consistently without prior permission from the authority concerned. Therefore, there was no option available with the respondent No.2 except to terminate services of the petitioner, otherwise, it having adverse effect to the public at large and administration. However, learned advocate Mr.Munshaw is not able to point out any provision of law, in other words, any provisions from the Gujarat Panchayat Services [Discipline and Appeal] Rules, 1971 which gives powers to the authority to terminate services for the alleged conduct without holding departmental inquiry. Therefore, in absence of such provision or powers, when any employee's service has been terminated on the basis of the alleged allegation and / or misconduct, then it is the duty of the respondent to hold detailed departmental inquiry wherein chargesheet is required to be served on the delinquent employee, aginst which an explanation is required to be called for and then, whatever allegation is made, same is required to be proved in the departmental inquiry in presence of the concerned delinquent employee with right to cross examine such witness/s who can prove allegation against the delinquent employee. But in the instant case, undisputedly such detailed procedure is not followed by the respondent before terminating service of the petitioner. This aspect has been examined by the Apex Court and even Division Bench of this Court while considering the principle and law laid down by the Apex Court in following cases.

In case of MEENGLAS TEA STATE V. THE WORKMEN, reported in AIR 1963 SC 1719, wherein it is held as under:

"It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross examination as he desires. Then he must be given a chance to rebut the evidence led against him . This is the barest requirement of an enquiry of this character this requirement must be substantially fulfilled before the result of the enquiry can be accepted."

Even in case of S.E. & STAMPING WORKS LTD.

WORKMEN reported in AIR 1963 SC 1914, the Apex Court has observed as under :

"An enquiry cannot be said to have been properly held unless, [i] the employee proceeded against has been informed clearly of the charges levelled against him, [ii] the witnesses are examined ordinarily in the presence of the employee in respect of the charges, [iii] the employee is given a fair opportunity to cross examine witnesses, [iv] he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and [v] the enquiry officer records his findings with reasons for the same in his report."

In the case of U.P. WAREHOUSING CORPN. V. VIJAY NARAYAN reported in AIR 1980 SC 840, also the Court has held as under :

"The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross examine the witnesses relied upon by the appellant Corporation and an opportunity to lead evidence in defence of the charge as also a shows cause notice for the proposed punishment."

Even this Court also, having considered all three decisions of the Apex Court referred to above, in case of G.S.R.T.C v. C.G.RASADIYA reported in 1993 [1] GLR 442, the Division Bench of this Court has made the following observations which reads as under :

"14. In view of the aforesaid decisions, it would be difficult to uphold the contention raised by the learned advocate for the petitioner that in these cases the petitioner was not required to hold an elaborate inquiry for the misconduct of the respondent - Conductors. In both the petitions the Conductors' names are removed from the waiting list on the alleged ground of misappropriation of bus ticket fare as it is alleged that at the time of checking the buses on the relevant dates the Conductors had not issued the tickets after recovering fare and on such other grounds. In both the cases the

> Conductors have denied the allegations made against them. Inspite of this, the petitioner has not held any further inquiry. As both the Conductors have denied the allegations made against them, further inquiry ought to have been held and the department ought to have adduced evidence in support of the charges, and the delinquents ought to have been permitted to put relevant questions by way of cross examination if they desire. They also ought to have been given further chance to lead evidence in support of their case. In our view, this would be the barest requirement of holding an inquiry in this type of grave misconduct. In the present cases Bus Conductors are not removed on account of unsuitability. If they are removed without casting any stigma, then in that case further inquiry is not necessary. In this view of the matter, it cannot be said that the order passed by the Labour Court calls for any interference."

7. Learned advocate Ms.Harshal Pandya for the petitioner has also further submitted that after service has been terminated by the respondent, the petitioner has approached the District Development Officer, Kachchh by representations dated 10th August, 1998, the Development Commissioner on date 12th January, 1999 and the Chief Minister of the Gujarat State on 28th August, 1999 but no response given by any of the higher authority to the petitioner and that is how, ultimately the petitioner has approached this Court. Therefore, she submitted that once the procedure under the Gujarat Panchayat Services [Discipline and Appeal] Rules is not followed and when the impugned order is contrary to the principles of natural justice, then the order of termination requires to be quashed and set aside and the petitioner is entitled to full backwages of interim period as a matter of legal right. As against that, learned advocate Mr.Munshaw has submitted that the petitioner is not entitled to any amount of backwages as in the other two cases relied upon by the petitioner, in their cases also, no backwages has been granted by the concerned authority and therefore, he submitted that since the petitioner who remained absent continuously and consistently without prior permission for number of days, then, no such backwages should be ordered to be paid, otherwise, it amounts to premium being given to the irregular teacher whose conduct has adversely affected the administration as well as career of the students of the village. Therefore, according to the submissions made by the

learned advocate Mr.Munshaw, no backwages should be paid to the petitioner for the interim period.

8. I have considered submissions made by the learned advocates for the parties in respect of the question of backwages. Considering the facts and circumstances of the case and averments made in the reply by the respondent No.2, according to my opinion, the petitioner's to remain absent constantly and consistently without prior permission without any justification for the period from 17th December, 1994 to 23rd December, 1994 and thereafter on 15th October, 1995 to 29th December, 1995 and then from 21st June, 1996 to 5th February, 1998 for more than 551 days and in between the petitioner had only worked for 27 days in a total period of one year. Therefore, considering all the facts as well as misconduct which cannot be said to be gross in nature as the same was not relating to dishonesty and misappropriation of fund of the respondent but because of some compelling circumstances, it might have occurred and happened with the petitioner to remain absent continuously and when the respondent being State Authority has not followed the proper and prescribed procedure provided under Discipline and Appeal Rules before terminating the services of the petitioner which is contrary to the principles of natural justice and therefore, according to my opinion, the order of termination dated 14th July, 1998 is required to be quashed and set aside while keeping in mind the two orders of reinstatement have been passed in respect of two similarly situated Assistant Teachers Smt.Kalawatiben C. Patel and Smt.Subdhra B. Patel whose services were terminated on 14th July, 1998 on the similar charge of remaining absent unauthorisedly.

9. In the result, the present petition is partly allowed. The order of termination dated 14th July, 1998 is hereby quashed and set aside with direction to the respondents to reinstate the petitioner in service with continuity of service without backwages of the interim period, within one month from the date of receipt of this order.

Rule is made absolute with no order as to costs.

Direct Service permitted.

Date : 1.9.2003 [H.K.Rathod, J.]

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